

REMARKS

This paper is responsive to an Official Action that was issued in this case on March 30, 2007. In that Action, the Office withdrew previous claim rejections and issued new rejections under 35 USC §102 or, alternatively, under 35 USC §103 over U.S. Pat. No. 6,882,980 to Schuller.

Rejection of Claim 23 Under 35 USC §112, ¶2

Claims 34 and 35 were rejected under 35 USC §112, ¶2, because they depend on canceled claim 33. In response, claim 34 has been amended to change the dependency from "claim 33," which was canceled, to "claim 31," which remains pending.

Rejection of Claims 20, 22-32 and 34-40 Under 35 USC §102/103

The Office alleges that all pending claims are either anticipated or obvious over a patent to Schuller. Schuller is discussed below.

Schuller

Schuller discloses a commerce network for products that require specialized preparation, testing, and like. As Schuller notes in the Background section at col. 1, lines 17-25:

[t]ypical automated purchasing systems are designed for the purchase of known product configurations. For products requiring specialized preparation ... or for which unknown factors need to be determined, traditional e-commerce system designed for ***pre-configured product sales and distribution may be inappropriate***. Consequently, improved e-commerce systems able to handle more complex product sales and configuration issues are desired.

Schuller continues at col. 1, lines 30-38:

Application-specific and formulation-specific characteristics of a new product or new application of an existing product may be unknown. In such cases, prior to purchase, ***a purchaser may need to separately contract for, or otherwise engage in, product formulation***, testing and other suitability assurance processes. Advantages can be gained by streamlining these processes using a computer-automated system.

Under the "Summary" section, several "aspects" of the invention are identified:

- Receiving at a server computer from a client computer a "product identifier." In response, testing of a sample of the identified product is scheduled and the results are stored. The results may be retrieved in response to a query from the user.
- **Receiving a formulation of a chemical product. The formulation can identify raw materials as well as process steps.** Additional data associated with the formulation is then retrieved from a database and processed to determine expected characteristics of the chemical product. The formulation may be modified based on user interaction, and then the modified formulation may be analyzed to determine characteristics of the modified chemical product.
- A database operatively coupled to a server for storing chemical product data for a number of chemical materials. The data can include **starting point formulations**, etc. This data can be delivered to a client computer.

According to the Detailed Description section:

- The web server provides a "one stop shop" for **chemical product formulating information** and services where registered users can get information and can formulate chemical products online.
- Suppliers can pay to have their products listed.
- Paint manufacturers may **create or modify paint formulations** using information in the database concerning raw material information, characteristics of paint products made from supplied formulations.
- Once a recipe has been approved by a purchaser, the seller produces it and ships it to the seller.
- Users can avail themselves of **custom paint formulation services** via the database and server.

The disclosure provided in the Summary and Detailed Description sections are consistent with the language that was excerpted from the Background section. That is to say, Schuller pertains to a system that enables purchasers of complex, formulation-specific products to access formulation data developed by manufacturers, order products based on the recipes, test the products that are produced from the recipes, and to develop their own formulations. This is facilitated by the database, which includes information about:

raw material(s) ... ,material safety data sheets, material use and
application guides, as well as data about manufacturing
processes....materials characteristics....manufacturing facilities

(Col. 3, lines 14-49.)

It is evident that few if any "batches" of such "specialized products" would be prepared, tested, catalogued in the database and waiting for a purchaser to purchase them. These products that Schuller pertains to are "application-specific" and "formulation-specific." It would make little sense, from the point of view of a seller, to have a large inventory of such specialized formulated products, because the likelihood of a significant quantity of such products being purchased is low. And that's the primary purpose of Schuller's system; it provides a way for a purchaser (or even a manufacturer) to formulate a product using information stored in the database.

It is notable that Schuller contains no disclosure concerning any of the issues pertaining to the sale of specialty chemicals, which is the subject of applicant's invention, as discussed below.

Applicants' Invention

The present invention is a data processing system and method for facilitating the sale of specialty chemicals. The purchase of specialty chemicals raises a number of vexing issues. In particular:

- *How does a purchaser of specialty chemicals deal with the characteristic batch-to-batch variations?*

A user of specialty chemicals will produce a product that is dependent upon the quality or characteristics of the specialty chemical. But those characteristics can vary widely from one batch to the next, even from the same supplier.

- *How does a purchaser of specialty chemicals directly compare offerings from different suppliers?*

This is problematic for several reasons. In the prior art, each supplier or manufacturer of specialty chemicals establishes its own "standard" for each chemical that it sells.

The standard is a set of chemical and physical properties that are used to describe the specialty chemical. To evaluate the variability that inevitably occurs in each batch of chemical produced, the supplier establishes a "specification." The specification is the nominal range for each chemical and physical characteristic that is listed in the standard. The specification typically includes an upper limit and a lower limit for each characteristic. Using the specification, each batch of chemical can be characterized as "in-specification" or "out-of-specification" as to each characteristic.

Since, in the prior art, the supplier sets the standard and specification for each chemical it sells, and the standards and specifications that are established by any one supplier for its products are almost always different from those established by other suppliers, it is usually impossible to directly compare the specialty chemical offerings from different suppliers.

- *Can a supplier's analysis of its specialty chemical offerings be trusted?*

A prospective purchaser might have some reservations about the objectivity of test results because each supplier analyzes its own products. One solution to this problem is provided by using third-party testing facilities that offer buyers and sellers the benefit of independent (i.e., objective) testing.

- *How does a supplier of specialty chemicals promote the sale of excess inventory of a specialty chemical?*

A supplier might be willing to price the excess specialty chemical below its normal selling price. But this is problematic because if a full-fare customer of the supplier learned of this discounted sale, problems would almost certainly arise.

One way to avoid this complication is to sell the excess inventory as a "unbranded" chemical. In other words, the specialty chemical is not identified as being manufactured by the supplier nor is it sold under its trademark. But to what standard and specification does the supplier reference the specialty chemical? If the standard and the specification that it normally used to characterize that specialty chemical are used with the non-branded material, the supplier risks being identified.

Applicants' claimed invention addresses these problems as follows.

- Some embodiments of the present invention establish a uniform standard for each specialty chemical that is being offered for sale of the data processing system. The term "uniform standard" is defined in the specification at p. 10, lines 12-14, to mean "a supplier-independent set of chemical characteristics or physical characteristics or both that are used to describe a chemical."
- In some embodiments of the present invention, a requirement is established by a prospective purchaser of a specialty chemical. The term "requirement" is defined in the specification at p. 11, line 27 – p. 12, line 1, to mean, "for a specialty chemical of interest, allowed ranges (from a prospective purchaser's point of view) for the measured values of the various chemical and physical characteristics that make up the uniform standard." This "requirement" is analogous to the prior-art "specification," except that in accordance with the illustrative embodiment, it is the prospective purchaser, rather than the supplier, that defines the requirement (specification). (Spec. at p. 13, line 26 – p. 15, line 11.) The prospective purchaser can then use the requirement as a tool for evaluating various batches of specialty chemicals. But this is practical only if all batches under consideration are characterized by the uniform standard.

In this manner, the present invention benefits a prospective purchaser by facilitating a direct comparison of offerings from different suppliers.

- In accordance with the illustrative embodiment, a sample of each batch of specialty chemical that is available for purchase through the data processing system is analyzed by an independent testing facility, in accordance with the *uniform standard* established for the chemical. The test results are input into the data processing system and, in some embodiments, are organized into an inventory database. A prospective purchaser patronizing the data processing system establishes the *requirement* for the specialty chemical that it wishes to purchase. After the prospective purchaser enters its requirement into the data processing system, the data processing system searches the inventory database in an attempt to identify batches of the specialty chemical for sale that satisfy the purchaser's requirement. If any batches of the specialty chemical are identified that satisfy the purchaser's requirement, then that is reported to the prospective purchaser so that it can purchase the batch through the data processing system.

Turning now to the claim language, claim 20 recites a method comprising:

receiving, at a data processing system, a requirement
from a prospective purchaser for a first chemical;
comparing, in said data processing system, said
requirement to analyses of batches of said first chemical that
are available for purchase from at least two different suppliers
through said data processing system to identify a batch that
satisfies said requirement, wherein said ***analyses are obtained***
from a testing facility that tests samples of said batches in
accordance with a uniform standard that is established for
said first chemical, and further wherein ***each batch that is***
available for purchase is analyzed by said testing facility; and
outputting, from said data processing system, an indicium of
said identified batch to said prospective purchaser.

Schuller does not disclose or suggest what is recited in claim 1.

First, there is no disclosure or suggestion of receiving a “requirement,” as that term is defined in applicants’ disclosure. Again, a requirement is “for a specialty chemical of interest, allowed ranges (from a prospective purchaser’s point of view) for the measured values of the various chemical and physical characteristics that make up the uniform standard.”

Schuller discloses that that a client provides a “product identifier.” The product identifier is the name of a product or a formulation. There is no disclosure, in Schuller, the product identifier can be a listing of the allowed ranges for the measured values of the various characteristics that make up the (non-disclosed) uniform standard. Since Schuller’s subject matter is so different from the claimed subject matter, the concept of a “requirement,” as defined by applicant, really doesn’t make any sense.

Claim 20 recites “comparing ... [the] requirement to analyses of batch of said first chemical that are available for purchase from at least two different suppliers through said data processing system.”

Second, there is no disclosure or suggestion that any **specific batches** of anything are available for sale via Schuller's system. Manufacturer's *offerings* are advertised, but not actual batches of product.

Third, in Schuller, **testing is performed after a product is identified** by a prospective purchaser, or after a formulation is developed. (See, e.g., col. 1, lines 44-47: "receiving at a server computer from a client computer transaction data that includes a product identifier. In response, testing of a sample of the identified product is scheduled.")

Fourth, there is **no comparison** between the purchaser's definition (*i.e.*, the requirement) of the product they wish to purchase and actual analyses of batches of that product that are available for purchase from at least two different suppliers.

As a consequence, claim 20 is allowable over Schuller, as are all claims dependent thereon.

Claim 31 recites a method comprising:

<p>outputting, from a data processing system, a uniform standard for a chemical, said uniform standard defined by a supplier-independent set of physical and chemical characteristics of said chemical;</p> <p>receiving, at said data processing system, a requirement from a prospective purchaser for said chemical, wherein said requirement comprises an allowable range of values for at least some of said physical and chemical characteristics that define said uniform standard, and wherein said chemical is available for purchase via said data processing system; and</p> <p>comparing, via said data processing system, said requirement to analyses of a plurality of batches of said chemical that are available for purchase through said data processing system, wherein each batch that is available for purchase is analyzed by said testing facility.</p>

Schuller does not disclose or suggest what is recited in claim 31. In particular, Schuller does not disclose or suggest anything at all relating to outputting a "uniform standard." Furthermore, as previously discussed, Schuller does not disclose or suggest receiving a "requirement." Nor, as previously mentioned, does Schuller disclose or suggest performing

a comparison between the not-specified requirement and the not-performed analysis of the non-existent specific batches of chemical that are available for purchase.

As a consequence, claim 31 is allowable over Schuller, as are all claims dependent thereon.

Claim 38 recites a method comprising:

receiving, at a data processing system, a requirement from a prospective purchaser for a first chemical;

comparing, in said data processing system, said requirement to analyses of batches of said first chemical that are available for purchase through said data processing system to identify a batch that satisfies said requirement, wherein said analyses are obtained from a testing facility that tests samples of said batches in accordance a uniform standard that is established for said first chemical, and wherein each batch that is available for purchase is analyzed by said testing facility.

Claim 38, and claims dependent thereon, are allowable over Schuller for some of the same reasons as claims 20 and 31.

Conclusion

In view of the foregoing, it is believed that claims 20, 22-32, and 34-40 now presented for examination are allowable over the cited art. A notice to that effect is solicited.

Respectfully,
Christopher Charles McCormick et al.

By **/Wayne S. Breyer/**
Wayne S. Breyer
Reg. No. 38089
Attorney for Applicants
732-578-0103 x12

DeMont & Breyer, L.L.C.
Suite 250
100 Commons Way
Holmdel, NJ 07733
United States of America